

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MALCOLM HANSON,

Plaintiff,

v.

BOARD OF PAROLE HEARINGS, et al.,

Defendants.

Case No. 1:23-cv-00599-JLT-SAB (PC)  
Appeal No. 23-15850

**NOTICE AND ORDER FINDING THAT  
APPEAL WAS NOT TAKEN IN GOOD  
FAITH**

(Doc. 16)

This action was filed by pro se litigant Malcom Hanson on April 19, 2023, pursuant to 42 U.S.C. § 1983. The case was screened on April 25, 2023, at which time the assigned magistrate judge recommended dismissal of the action for failure to state a claim because Plaintiff sought to challenge the duration, not the conditions, of his confinement. (Doc. 9.) The undersigned adopted the findings and recommendations on May 22, 2023, and Judgment entered the same day. (Docs. 11, 12.) Plaintiff filed a notice of appeal on June 5, 2023. (Docs. 11, 13.) On June 8, 2023, the United States Court of Appeals for the Ninth Circuit referred this action for determination whether in forma pauperis status should continue on appeal, or whether the appeal is frivolous or taken in bad faith. (Doc. 16.) Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(B), the Court now certifies that the appeal filed on June 5, 2023, was not taken in good faith.

An appeal is taken in good faith if the appellant seeks review of any issue that is not frivolous. *Gardner v. Pogue*, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing *Coppedge v. United*

1 *States*, 369 U.S. 438, 445 (1962)) (quotation marks omitted); *see also Hooker v. American*  
2 *Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is non-frivolous,  
3 the appeal must proceed in forma pauperis as a whole). This case was dismissed because  
4 Plaintiff did not challenge the conditions of his confinement but rather the duration, which is  
5 not proper under Section 1983. *See Hill v. McDonough*, 547 U.S. 573, 579 (2006) (“Challenges  
6 to the lawfulness of confinement or to particulars affecting its duration are the province of  
7 habeas corpus”) (citation omitted). Therefore, the appeal is frivolous. Accordingly, the Court

8 ORDERS:

- 9 1. Pursuant to Fed. R. App. P. 24(a)(4)(B), the Court finds that the appeal is  
10 frivolous and was not taken in good faith.  
11 2. Pursuant to Fed. R. App. P. 24(a)(4), the Clerk of the Court shall serve this  
12 order on Plaintiff and the Court of Appeals for the Ninth Circuit.

13  
14 IT IS SO ORDERED.

15 Dated: **June 19, 2023**

  
UNITED STATES DISTRICT JUDGE